

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Willie Joe Sturkey,

Plaintiff,

vs.

Ms. Hudson, et al.

Defendants.

Civil Action No.: 8:10-1479-RMG-BHH

**REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE**

The Plaintiff filed this prisoner civil rights action on June 11, 2010. Before the court is the Plaintiff's Motion for a Default Judgment. (Dkt. #51.) The Plaintiff contends that the defendants have "failed to answer or otherwise defend as to Plaintiff's complaint" and that default judgment should be entered. However, a review of this case shows that a default judgment is not appropriate.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

Rule 55(a) of the Federal Rules of Civil Procedure provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed.R.Civ.P. 55(a). Here, the Defendants have not failed to otherwise defend and are not in default. On August 25, 2010, the Defendants filed a Motion to Dismiss, or alternatively, for Summary Judgment. (Dkt. # 41.) The Defendants' Motion to Dismiss is a responsive pleading. Thus, Plaintiff's Motion for Default Judgment is without merit and should be denied.

Based on the foregoing, it is recommended that the Plaintiff's Motion (Dkt. # 51) be DENIED.

IT IS SO RECOMMENDED.

s/Bruce Howe Hendricks
United States Magistrate Judge

September 15, 2010
Greenville, South Carolina

The Plaintiff's attention is directed to the important notice on the next page.